COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 01-34

REQUEST: Attorney General Record Request to AT&T Communications of New England, Inc.

DATE: May 30, 2002

RR-AG-1: Please provide the corrected revised total figure for wholesale installation quality to include on page 18 of Ms. Halloran's surrebuttal testimony.

Respondent: E. Halloran

RESPONSE: Please see the attached update to chart 3 on page 18 of my surrebuttal testimony.

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REQUEST: Attorney General Record Request to AT&T Communications of New England, Inc.

DATE: May 30, 2002

RR-AG-2: What effect does the Department's order of May 8, 2002, in D.T.E. 01-31 have on the testimony of Ms. Halloran as submitted in this proceeding?

Respondent: E. Halloran in Reliance on Counsel

RESPONSE: The Department's May 8, 2002, Order in D.T.E. 01-31 has profound impacts on this case. In D.T.E. 01-31, the Department interpreted Verizon's petition for alternative regulation as a petition for a determination of non-dominance in the business services markets. Prior to this case, Verizon's access rates and end-user retail rates had been regulated based on the premise that Verizon had monopoly power in those markets (rate of return regulation prior to 1995 and then price cap regulation after 1995, pursuant to D.P.U. 94-50). In D.T.E. 01-31, Verizon sought to demonstrate that the market for special access services is a competitive market in which Verizon did not have market power. The Department clearly rejected Verizon's contention, thus leaving in place Verizon's status as a dominant carrier in the provision of special access.

While Verizon has repeated its contention in this case that the special access market is competitive and, by implication, that Verizon is a non-dominant carrier in the special access market, the only argument and evidence Verizon presented here is the same argument and evidence it presented in D.T.E. 01-31, *i.e.*, the Massachusetts Competitive Profile from D.T.E. 01-31, and the same FCC rulings regarding special access. Since the Department has already stated that it is not persuaded by this evidence, and since Verizon has presented nothing new in this case, the Department's May 8 Order in D.T.E. 01-31 is dispositive on the issue here: Verizon remains a dominant carrier in the provision of special access, and Verizon can and should be regulated accordingly. For purposes of this case, which addresses Verizon's special access provisioning and maintenance performance, the Department's May 8 Order in D.T.E. 01-31 thus means that the Department must put in place

measures that will prevent Verizon from discriminating against its competitors in the provisioning and maintenance of special access circuits.

Moreover, Verizon's June 5 "compliance" filing in D.T.E. 01-31 confirms the Department's determination in its May 8 Order that Verizon has market power that provides Verizon with unfair competitive advantages in the special access market - advantages that Verizon seeks to preserve. Indeed, as I explain below, Verizon prefers to remain price regulated, even while it argues that it should not be performance regulated, if that is the only way to preserve its competitive price and performance advantage. In its June 5 Compliance filing, Verizon interpreted the Department's Order to give it the option to decline to lower its special access charges to TELRIC levels if it agrees to leave the downstream retail services that rely on those circuits (private line services) rate regulated.[1] Based on that interpretation, Verizon effectively withdrew its request for rate deregulation of its private line business services, so that it could maintain above cost prices for the special access that its rivals use to compete with it. Thus, if the Department requires as a condition of deregulation that Verizon compete on the same terms as its rivals, Verizon elects to stay price regulated (even as it fights to stay service quality unregulated).

Verizon's voluntary choice to subject its private line business services to a Department imposed rate cap rather than permit its competitors access to the underlying facilities at the same cost that Verizon incurs is compelling evidence of the extraordinary advantages that the current system of access pricing gives to Verizon. While the price issue should be dealt with in Phase II of D.T.E. 01-31, the Department in this case should eliminate the service quality advantages that Verizon gives to its end users through its retail operations and denies to its wholesale customers.

[1] I understand from counsel that AT&T does not agree with Verizon's interpretation and will present its position on that issue in its Comments on Verizon's June 5 filing, which are due on June 21, 2002.